

KAFB 91

FILED

IN THE COURT OF APPEALS FOR THE STATE OF NEW MEXICO

UNITED STATES OF AMERICA,)
 DEPARTMENT OF THE AIR FORCE,)
 Appellant)
)
 v.)
)
 STATE OF NEW MEXICO,)
 ENVIRONMENTAL IMPROVEMENT)
 DIVISION OF THE HEALTH AND)
 ENVIRONMENT DEPARTMENT,)
 Appellee.)

No. 12,550

COURT OF APPEALS OF NEW MEXICO
FILED

JAN 2 1991

MOTION FOR STAY OF PERMIT

Patricia C. Mangano

COMES NOW, the Appellant, the United States of America, Department of the Air Force and moves this Court for an order to stay the Kirtland Air Force Base Operating Permit, No, NM 9570024423-1, issued July 24, 1990 for a ten year period, which is the subject of the appeal. This motion is made pursuant to the jurisdictional authority of this Court as contained in SCRA 12-207 and NMSA Section 34-5-8A(6). In further support of this Motion the Appellant would show the Court as follows:

1. This appeal involves the issuance of a Hazardous Waste Storage Facility permit (Part B permit) to Kirtland Air Force Base (KAFB) by the New Mexico Environmental Improvement Division. Prior to July 24, 1990, KAFB was operating a hazardous waste storage facility under the provisions of an interim status (Part A) permit in accordance with the New Mexico Hazardous Waste Act;

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2. The Appellant has brought this appeal as to the issuance of the Part B permit on six specific points on the grounds that the requirements imposed by the Part B permit are:

a. Not in accordance with the law in that the requirements are more restrictive and stringent than federal regulations, thus in violation of NMSA Section 74-4-4A, and;

b. Arbitrary and capricious in that the definitions and classifications employed and the testing required are not supported by the evidence on the record or federal regulations;

3. The application process for the Part B permit has been ongoing since approximately 1984 and the delay until this Court's determination of the points on appeal would not substantially prejudice the Appellee or create any unreasonable risk or danger to the environment. During the appeal the Part A permit would continue in force, KAFB is not using the newly permitted hazardous waste storage facility during the pendency of the appeal;

4. The failure to stay the Part B permit would create an undue burden and hardship on KAFB in that it requires the establishment of new systems and programs which were neither contemplated, staffed, nor funded;

5. Failure to stay the Part B permit will result in further litigation in both state and federal courts in that should the New Mexico Environment Improvement Division attempt to enforce the present Part B permit through further inspections similar to the one conducted in September 1990, that may result in a notice of violation without a determination by this Court as to

the disputed portions. A jurisdictional conflict may be created which must be decided by the federal courts as well as procedural issues which will involve state courts. It is the position of the New Mexico Environmental Improvement Division that the entire permit is in force, including those portions on appeal, during the pendency of the appeal;


6. KAFB intends to file in January 1991 a formal request for modifications of the Part B permit pursuant to 40 CFR 270.41 as adopted by the New Mexico Waste Management Regulations, such modification request will further attempt to resolve the points of dispute during the pendency of this appeal without further litigation expenses.

WHEREFORE, in the interest of judicial economy, prevention of jurisdictional conflict and the public interest in prevention of unnecessary intergovernmental litigation, it is respectfully requested the Part B permit issued to KAFB be stayed.

Respectfully submitted,

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